IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6735 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

REKHABEN @ SANGI, WIFE OF NARUBHAI BACHUBHAI MENEKAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6735 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 08/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. HR Prajapati for the

petitioner and ld. AGP Ms. HB Punani for the other side.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner who is a lady detenu has challenged the legality and validity of the order of detention dated 29.05.2004 passed by the Police Commissioner, Ahmedabad City in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA Act.

3. The grounds for detention supplied to the detenu petitioner indicate that the petitioner was found involved involved in 3 different offences punishable under Sections 66B, 65AE of the Bombay Prohibition Act between 04.11.2002 and 27.05.2004, as mentioned in the tabular form in the grounds of detention page-1 conveyed to the petitioner detenu at the time of execution of the order of detention dated 29.05.2004.

4. The petitioner has challenged the legality and validity of the order of detention on number of grounds as mentioned in the memo of the petition. Ld. counsel Mr. Prajapati for the petitioner, has taken this Court through the contentions raised in the petition. However, he has focussed his arguments mainly on one grounds. He has submitted that the subjective satisfaction of the detaining authority has been recorded mechanically and in hot haste and there were no sufficient reason or cause for the detaining authority to record a finding to the effect that the activities of the detenu resulted into the threat to maintenance of public order or public healthy. From the grounds of detention conveyed, Mr. Prajapati has pointed out that on the date of passing of order of detention, the petitioner was in judicial custody in connection with the third offence registered against her on 27.05.2004. She was arrested on the same day. The fact of the petitioner being in judicial custody is even considered by the detaining authority and, therefore, there was no reason for the sponsoring authority to pray for passing of the order of preventing detention as it was not necessary.The order is passed under conjecture and surmises that she would get the bail and shall continue her bootlegging activities. Pointing the date of registration of offence reference of which has been made by the sponsoring authority in the order of detention, it is argued that the order is passed mechanically. The proposal must have been made on or

about 28th or 29th May, 2004 because she was in police remand up to 29.05.2004 and investigating agency was directed to reproduce her before him on 29.05.2004 at 4.00 P.M. The order of detention is dated 29.05.2004. So, it can legitimately be inferred that in view of the ratio of the decision of this Court in the case of Ranubhai Bharwad (Vekaria) v/s State of Gujarat & Ors., 2000(3) GLR 2696, the impugned order of detention is passed in mechanical exercise of powers. It is not necessary to reproduce relevant para-9 of the said decision, but in the facts and circumstances of the case, I am of the opinion that the ratio of the above-cited decision would squarely cover the case of the present petitioner and hence petition requires to be allowed. So, on both the grounds, impugned order of detention requires to be quashed and set aside.

5. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 29.05.2004 passed by the Police Commissioner, Ahmedabad City is hereby quashed and set aside and detenu -lady is hereby ordered to be set at liberty forthwith if she is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

*rawal